

Message Text

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PAGE 01 CANBER 00590 240649Z
ACTION STR-06

INFO OCT-01 EA-12 ISO-00 STRE-00 EB-08 COME-00 SSO-00
CTME-00 /027 W

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O 240604Z JAN 78
FM AMEMBASSY CANBERRA
TO SECSTATE WASHDC IMMEDIATE 2234

UNCLAS CANBERRA 0590

FOR JON RESENBAUM, STR, FROM COMMATT

EO 11652: NA
TAGS: AS
SUBJECT: ORTHOPEDIC SHOES - AMBASSADOR WOLFF'S VISIT

REF: (A) STATE 018319, (B) 77 CANBERRA 08229, (C) 77 USDOC 22677

1. COMMATT WAS CONTACTED NOVEMBER 11 BY GERALD LEVY, AMERICAN IMPORTER OF P.W. MINOR AND SON, INC. ORTHOPEDIC SHOES, SUBJECT OF REFTEL A. THERE FOLLOWED CONSIDERABLE CORRESPONDENCE AND INVESTIGATION BY COMMATT, WITH DECEMBER 2 LETTER TO LEVY ADVISING ON SUGGESTED FURTHER ACTION. EMBASSY HAS EXPRESSED ITS WILLINGNESS TO PROVIDE WHATEVER FURTHER ASSISTANCE LEVY MAY DESIRE.

2. LEVY WAS HANDICAPPED INITIALLY BY A DEGREE OF CONFUSION AS TO AUSTRALIAN LAW AND PROCEDURES, WHICH EMBASSY BELIEVES IT HAS SUCCEEDED IN CLARIFYING.

3. LEVY'S SHOE IMPORTS INITIALLY WERE DUTY-FREE UNDER BY-LAW. A BY-LAW IS A WAIVER OF NORMAL DUTY AND CAN BE GRANTED BY CUSTOMS AT ITS DISCRETION WHEN THERE IS NO LOCAL PRODUCER MAKING OR DESIRING TO MAKE THE PRODUCT IN QUESTION. AS A LOCAL SHOE MANUFACTURER SUBSEQUENTLY REQUESTED TERMINATION OF BY-LAW IMPORTATION, CUSTOMS WITHDREW THE

UNCLASSIFIED

PAGE 02 CANBER 00590 240649Z

BY-LAW, AND NORMAL DUTY MUST BE PAID. THERE IS NO RECOURSE IN CASE OF BY-LAW WITHDRAWAL.

4. MINOR SHOES WERE INITIALLY IMPORTED ONLY INTO SYDNEY AND WERE CLASSIFIED BY CUSTOMS IN SYDNEY AS ORTHOPEDIC, WHICH IS CUSTOMS TARIFF ITEM NO. 90.19. WHEN THE SHOES WERE IMPORTED INTO MELBOURNE IN 1975, MELBOURNE CUSTOMS

CLASSIFIED THEM AS ORDINARY FOOTWEAR, WHICH S CUSTOMS
TARIFF ITEM NO. 64.02. LEVY PROTESTS LED TO MATTER BEING
REFERRED TO CUSTOMS HEAD OFFICE IN CANBERRA, WHICH UPHELD
THE MELBOURNE RULING. RULING IS BASED ON ASSERTION THAT
SHOES DO NOT BECOME ORTHOPEDIC UNTIL THEY HAVE BEEN FITTED
WITH INSERTS.

5. AUSTRALIAN CUSTOMS, LIKE U.S. CUSTOMS, HAS SOLE
RESPONSIBILITY FOR CLASSIFYING IMPORTS. STATEMENT BY
ROYAL AUSTRALIAN COLLEGE OF SURGEONS, CITED PARA 12 REFTEL A, THAT
MINOR SHOES ARE ORTHOPEDIC WAS SOLICITED BY LEVY AS ONE OF
A NUMBER OF INITIATIVES TO PERSUADE CUSTOMS TO REVERSE ITS
CLASSIFICATION RULING. HOWEVER, SOME MONTHS EARLIER
SECRETARY OF DEPARTMENT OF BUSINESS AND CONSUMER AFFAIRS ON
BEHALF OF MINISTER ADVISED THAT SHOES WERE CORRECTLY
CLASSIFIED. FROM CUSTOMS STANDPOINT, THEN, DECISION HAS
BEEN RENDERED AT HIGHEST EXECUTIVE BRANCH LEVEL, AND
IMPLICATION PARA 12 AND 13 REFTEL THAT STATEMENT OF ROYAL
AUSTRALIAN COLLEGE OF SURGEONS HAS ANY ADMINISTRATIVE OR
LEGAL FORCE IS UNFORTUNATELY INCORRECT.

6. EMBASSY BELIEVES CRUX OF CLASSIFICATION ISSUE IS
WHETHER THERE ARE FEATURES OF MINOR SHOES WHICH ARE NOT
FOUND IN ORDINARY SHOES AND BEGIN UNDERLINE WHICH WOULD
PRECLUDE ORDINARY SHOES FROM BEING USED FOR THE ORTHOPEDIC
PURPOSES THAT MINOR SHOES ARE USED FOR END UNDERLINE. THIS
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 CANBER 00590 240649Z

IS A TECHNICAL MATTER, WHICH HAS TO DATE NOT BEEN PROPERLY
ESTABLISHED. EMBASSY HAS RECOMMENDED THAT LEVY PROCEED
TO ESTABLISH FACTS BEFORE JUDICIAL TRIBUNAL AVAILABLE FOR
SUCH PURPOSES. THIS TRIBUNAL, ADMINISTRATIVE APPEALS
TRIBUNAL, IS AN INDEPENDENT BODY IN WHICH THE PRESIDENT IS
A JUDGE. IT REVIEWS DECISIONS MADE BY COMMONWEALTH MINISTERS,
AUTHORITIES, AND OFFICIALS UNDER A NUMBER OF LAWS, AND ITS
JURISDICTION COVERS CUSTOMS CLASSIFICATION APPEALS.

7. PROCEEDINGS BEFORE THE TRIBUNAL ARE TO BE CONDUCTED
WITH AS LITTLE FORMALITY AND AS MUCH EXPEDITION AS POSSIBLE.
A PARTY MAY PRESENT HIS OWN CASE OR BE REPRESENTED BY SOME
OTHER PERSON. COMMATT IN DECEMBER 2 LETTER TO LEVY
DISCUSSED IN CONSIDERABLE DETAIL ALL ASPECTS OF AN APPEAL
TO TRIBUNAL AND RECOMMENDED THAT HE PURSUE THIS ROUTE,
WHICH EMBASSY BELIEVES HE IS PRESENTLY DOING.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 24 jan 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978CANBER00590
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780034-1156
Format: TEL
From: CANBERRA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780131/aaaaazma.tel
Line Count: 111
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 59ee24e1-c288-dd11-92da-001cc4696bcc
Office: ACTION STR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 18319, 77 CANBERRA 8229
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 25 feb 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3727114
Secure: OPEN
Status: NATIVE
Subject: ORTHOPEDIC SHOES - AMBASSADOR WOLFF'S VISIT
TAGS: BEXP, AS
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/59ee24e1-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014